



REQUEST FOR PROPOSAL (RFP)

January 13, 2010

RFP NUMBER: **RFP No. 0111-10-IAS**

RFP SUBJECT: **INDEPENDENT AUDIT SERVICES**

NON MANDATORY PRE-PROPOSAL CONFERENCE: **February 2, 2010**

PROPOSALS SHOULD BE SUBMITTED TO: Purchasing Office / City Of Falls Church
300 Park Avenue, Rm 300 East
Falls Church, Virginia 22046 / Phone(703) 248-5007

All inquiries should be made in writing and forwarded to Faye Smith, Purchasing Manager, via email to fsmith@fallschurchva.gov with copy to jtuohey@fallschurchva.gov by no later than five (5) business days prior to the RFP due date.

SEALED PROPOSALS

DUE DATE AND TIME: **February 16, 2010 at 11:00 a.m.** Prevailing local time
Proposals are to be presented for time and date validation **ONLY to the City of Falls Church Purchasing Office.**
There will be no public opening of the Proposals.

All questions must be received in writing by no later five (5) business days before Proposal Due Date.

THIS PAGE MUST BE COMPLETED, SIGNED AND RETURNED WITH PROPOSAL

In compliance with this Request For Proposal and to all the conditions imposed herein, the undersigned offers and agrees to furnish the services in accordance with the attached signed proposal.

Please type or legibly print all information.

LEGAL NAME & ADDRESS OF FIRM:

Company Name

By: _____
Authorized Representative - Signature in Ink

Name: _____

Title: _____

Zip: _____ Date _____

Phone: _____ FAX: _____

Email: _____ VA Business Registration # _____

The City of Falls Church is committed to the letter and spirit of the Americans with Disabilities Act. This document will be made available in alternate format upon request. Call 703 248-5007, (TTY 711).

The City of Falls Church does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against any bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

RFP No. 0106-10IAS
INDEPENDENT AUDIT SERVICES

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I. GENERAL

- A. ACCESS TO RFP UPDATES: This RFP and any addenda are available on the City of Falls Church's website: **www.fallschurchva.gov**. The **Purchasing & Procurement** link which contains RFP/Bid information is listed in the Popular Topics Section on the home page. This solicitation and any associated addenda may also be published through eVA, the Commonwealth of Virginia's electronic procurement portal for registered suppliers (**<http://eva.virginia.gov>**).
- B. Offerors are reminded that changes to the RFP, in the form of addenda, are often issued between the issue date and within three (3) days before the closing of the RFP. **Offerors are solely responsible for checking the Website to insure that they have the most current information regarding the RFP.**
- C. All addenda must be signed and submitted with your proposal.
- D. Any questions pertaining to this solicitation must (1) be in writing, (2) received by no later than five (5) business days prior to the RFP closing date and (3) be directed only to:

Faye Smith, Purchasing Manager
 The City of Falls Church
 300 Park Ave, Falls Church, VA 22046
fsmith@fallschurchva.gov / Phone: 703.248.5007
 with a copy to jtuohy@fallschurchva.gov

- E. The City has the right to use any or all ideas presented in reply to this RFP, subject only to the limitations regarding proprietary/confidential data of Offeror.
- F. The City is not liable for any costs incurred by any Offeror in connection with this RFP or any response by any Offeror to this RFP. The expenses incurred by Offeror in the preparation, submission, and presentation of the proposal are the sole responsibility of the Offeror and may not be charged to the City.
- G. Nothing herein is intended to exclude any responsible offeror or in any way restrain or restrict competition. All qualified offerors are encouraged to submit proposals. The City of Falls Church reserves the right to reject any or all proposals submitted, to withdraw or re-advertise this RFP. This is a request for proposal and is in no way to be misconstrued as a commitment to purchase on the part of the City.
- H. The City of Falls Church is committed to the letter and spirit of the Americans with Disabilities Act. To request a reasonable accommodation for any type of disability call 703 248-5007, (TTY 711).

II. PURPOSE AND BACKGROUND

- A. The purpose and intent of this solicitation is to obtain the services of qualified certified public accountants to perform an independent financial and compliance audit for the City of Falls Church (the City), its component units, post-retirement benefit plans, agency funds, School Activity Funds, and fiscal agency, Northern Virginia Criminal Justice Training Academy (the Academy). The audit services shall be provided for fiscal years ending June 30, 2010 through June 30, 2012, with an option for two additional fiscal years in accordance with the specifications contained herein and the specific tasks set forth in Section III, Scope of Independent Audit services
- B. The City of Falls Church, a city of approximately 11,200 people, is located approximately five miles from Washington, D.C. Information describing the entity of City of Falls Church, Virginia, the funds and activities to be audited, and the financial highlights of the City can be obtained from a copy of the City of Falls Church Comprehensive Annual Financial Report (CAFR). The CAFR is available at the City's website: www.fallschurchva.gov or by contacting John H. Tuohy, CPA, Chief Financial Officer at {703} 248-5092 (e-mail: jtuohy@fallschurchva.gov) for a hard copy. No other information may be requested from or discussed with Mr. Tuohy except as specifically provided herein.

- C. During the past five years, the audits have been performed by the firm of Cherry, Bekaert, and Holland. The annual audits included compliance reviews in accordance with the Single Audit Act of 1984, provisions of the Federal Office of Management and Budget (OMB) OMB Circular A-128, "Audits of State and Local Governments" and the audit requirements for states, local governments, and non-profit organizations which receive federal awards as established by the OMB under Revised Circular A-133, as well as the "Specifications for Audits of Counties, Cities and Towns" of the Auditor of Public Accounts - Commonwealth of Virginia. The City submits its Comprehensive Annual Financial report to the Government Finance Officers' Association for the Certificate of Achievement for Excellence in Financial Reporting and has received the award for the previous six fiscal years.

III. SCOPE OF INDEPENDENT AUDIT SERVICES

A. Eligibility Requirements.

To be eligible to qualify as Contractor, the following minimum requirements must be met and maintained during the term of any resultant contract:

1. The offeror must be licensed to practice in Virginia as a Certified Public Accountant;
2. The offeror must be a member of the American Institute of Certified Public Accountants and must adhere to the AICPA professional standards of audit practices and conduct;
3. The offeror's staff supervisor proposed to be assigned to the audit must have at least two {2} years experience auditing similar governmental units and must demonstrate that they have assisted other governmental units in obtaining or retaining its Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association.
4. The offeror must demonstrate the capability to aid the City in ensuring that financial statements issued are in conformity with generally accepted accounting principles for local governments as determined by the governmental accounting and financial reporting standards issued by the Governmental Accounting Standards Board.

B. Periods To Be Audited.

1. An Engagement Year/Period shall end on December 31st of the applicable Fiscal Year unless otherwise specified herein.
2. Engagement Periods covered by initial contract award (Base Contract) as follows:
 - July 1, 2009 through June 30, 2010 - Fiscal Year 2010
 - July 1, 2010 through June 30, 2011 - Fiscal Year 2011
 - July 1, 2011 through June 30, 2012 - Fiscal Year 2012
3. The City reserves the right to extend the Contract with the Contractor for an additional two (2) Engagement Periods to be audited under the same terms and conditions as the Base Contract, with the consent of the Contractor. Periods covered by the extension years are as follows:
 - July 1, 2012 through June 30, 2013 - Fiscal Year 2013
 - July 1, 2013 through June 30, 2014 - Fiscal Year 2014

C. Specific Requirements

1. APA Transmittal Forms for Comparative Cost Report Agreed-Upon Procedures

The Auditor of Public Accounts of the Commonwealth of Virginia requires all localities to complete transmittal forms in accordance with the provisions of the Uniform Financial Reporting Manual. The City shall prepare the forms and the awardee shall render its

opinion to the Auditor of Public Accounts of the Commonwealth of Virginia no later than November 30 following the City's fiscal year end.

2. Compliance with Legal Requirements

The awardee shall comply with the provisions of any and all Federal, State, and County statutes, ordinances, bond covenants and administrative rules and regulations which may pertain to the work required in the engagement.

3. Audit Review

The audit shall not be limited to a specific review of the financial transactions and statements of the City and its Pension Plans. It shall include an overall review of the City's and the Pension Plan's financial and accounting systems and procedures. In addition to the financial statement audits, the awardee may be required to ensure that the City complies with GFOA Certificate of Achievement checklists and can continue to receive Certificates of Achievement of Excellence in Financial Reporting in the future. The City has received this award in the last six fiscal years.

4. Engagement Letter

An engagement letter, which includes engagement fees, shall be executed by the City and the Awardee prior to the beginning of each engagement year will become a part of the contract. A separate engagement letter shall be executed by the Northern Virginia Criminal Justice Training Academy and the Awardee.

5. Management Letter

The Awardee, upon completion of its examination and preparation of the necessary reports, shall submit a management report of the findings on the system of internal control and related budgeting and operating procedures by December 31 of the fiscal year-end audit. The report shall also offer recommendations for improving administrative methods, management operations and cost reductions, when considered by the Awardee to be appropriate and able to be documented within the scope of the audit.

6. Audit Conference

The Awardee shall provide status of the audit at regularly scheduled status meetings with the Chief Financial Officer and the Deputy Director of Finance. The Awardee shall also confer with the Chief Financial Officer and the Deputy Director of Finance or their designee for the purpose of reviewing its audit findings and recommendations prior to issuance of the reports and management letter. The Awardee shall also make its management personnel available to present the Comprehensive Annual Financial Report to the City Council at a regularly scheduled meeting and answer questions from the City Council members, if requested to do so.

7. Scheduling and Procedures

Prior to the beginning of each audit, an audit planning conference between the City and the Awardee shall be scheduled around April or May of each contract year. At this conference, the Awardee and the City will develop a time schedule and administrative procedures to be observed for the engagement. The Awardee shall also provide the City with a list of items it shall require from the City. The timing of such deliverables from the City will be discussed at this conference.

D. Deliverables

1. Comprehensive Annual Financial Report (CAFR) for the City.

The awardee shall audit the financial statements of the governmental activities, the business-type activities, the discretely presented component units, each major fund and the aggregate remaining fund information of the City of Falls Church, Virginia (the City),

which collectively comprise the City's basic financial statements. The audit shall be performed in accordance with auditing standards generally accepted in the United States of America, the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, and the *Specifications for Audits of Counties, Cities and Towns*, issued by the Auditor of Public Accounts of the Commonwealth of Virginia. The awardee shall apply similar procedures and provide an opinion on the City's other supplementary information.

If for any reason, the Auditors' opinion is other than unqualified, the Auditor must furnish to the City reasons for qualifying the opinion, disclaiming an opinion or rendering an adverse opinion within five (5) business days of such determination or as otherwise agreed upon by the parties.

In accordance with *Government Auditing Standards*, the awardee shall issue a report on their consideration of the City's internal control over financial reporting and their tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance.

The Management's Discussion and Analysis and other required supplementary information are not a required part of the basic financial statements but are supplementary information required by the Governmental Accounting Standards Board. The awardee shall apply certain limited procedures, which consist principally of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. No audit or opinion shall be required.

2. Financial statements for the Northern Virginia Criminal Justice Academy.

The City acts as fiscal agent for the Northern Virginia Criminal Justice Academy (the Academy). Respondents to this request for proposal are asked to submit a proposal for conducting the audit of the Academy as a separate engagement. The Academy is an Enterprise Fund and issues an annual financial report prepared in accordance with GAAP. Copies may be obtained by contacting John H. Tuohy at jtuohy@fallschurchva.gov or (703) 248-5092. No other information may be requested from or discussed with Mr. Tuohy except as specifically provided herein.

3. Financial statements for the City's two Pension Plans.

The Awardee shall provide an audit opinion on the City's two Pension Plans – the Basic and the Police. Copies of prior year financial statements may be obtained by contacting John H. Tuohy at jtuohy@fallschurchva.gov or (703) 248-5092. No other information may be requested from or discussed with Mr. Tuohy except as specifically provided herein. During the course of the contract period and the renewal periods, the City may change this to a Comprehensive Annual Financial Report.

4. School Activity Funds.

The Awardee shall provide its opinion on the School Activity Funds. The City currently has four school activity funds. The transactions are recorded using Manatee and are being managed by each of the schools.

5. Single Audit

The Awardee shall make the required compliance reviews in accordance with the audit requirements for states, local governments and non-profit organizations which receive federal awards as established by the Federal Office of Management and Budget under Revised Circular A-133 as well as reviews required in the "Specifications for Audits of Counties, Cities and Towns" of the Auditor of Public Accounts of the Commonwealth of

Virginia. The Awardee shall review the City-prepared Data Collection Form and complete its portion. The City will be expending funds from the American Reinvestment and Recovery Act (ARRA).

6. Sheriff's Audit

The Auditor of Public Accounts has prepared audit requirements for all monies received by the Sheriff. Chapter 3 of the Acts of Assembly requires the locality's independent auditor to submit a letter to the Auditor of Public Accounts of the Commonwealth of Virginia annually providing assurance as to whether the Sheriff has maintained a proper system of internal controls and records in accordance with the Code of Virginia.

E. Timing of Deliverables

1. The Awardee shall furnish its opinion on the City's Comprehensive Annual Financial Report by November 15 following the fiscal year-end.
2. The Awardee shall furnish its opinion on Northern Virginia Criminal Justice Training Academy financial statements by (Date TBD)
3. The Awardee shall furnish its opinion on the City's Pension Plans financial statements by (Date TBD)
4. The Awardee shall furnish its opinion on the School Activity Funds financial statements by (Date TBD)
5. The Awardee shall provide its opinion on the single audit and complete its portion of the Data Collection Form no later than December 31.
6. The Awardee shall furnish its opinion on the Sheriff's financial statements by (Date TBD)
7. The Awardee shall provide its opinion to the Auditor of Public Accounts on the transmittal forms for Comparative Cost Report by November 25.

If, during the course of the engagement, there is reason to believe that such deliverables will not be met on time, the Awardee shall provide the City with one week advance notice. However, the timing may not be changed so that the City shall fail to meet its requirements with the Commonwealth of Virginia and with the Federal government.

F. Invoices and Payment

The Awardee shall provide the City with separate invoices that detail the fees for each Deliverable and area of engagement: (1) the City's Comprehensive Annual Financial Report, (2) the City's Pension Plans, (3) Northern Virginia Criminal Justice Training Academy, (4) School Activity Funds, (5) Single Audit, and (6) Sheriff's Audit. The prices and payments shall be full compensation for the services rendered.

The City shall pay the Contractor net thirty (30) days after satisfactory completion of the services and receipt of an undisputed invoice unless (i) more favorable terms are stated on Contractor's invoice and the City elects to pay on such terms, or (ii) any items thereon are questioned, in which event payment will be withheld pending verification of the amount claimed and the validity of the claim. The Contractor shall provide complete cooperation during any such investigation.

All invoices shall reference the applicable Purchase Order number and be submitted to the address on the Purchase Order.

Payment terms shall appear on Contractor's invoice. Any discount period shall be computed from the date of proper receipt of the Contractor's correct invoice. Late payment charges shall not exceed the allowable rate specified by the Commonwealth of Virginia Prompt Payment Act (1%per month)

Payment by the City of invoices does not mean or imply that the services have been accepted and does not impair or limit in any way the City's full rights and remedies which shall be and remain as set forth hereof.

The City reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any modifications thereto.

Conflicting pre-printed provisions on the reverse or front of the Contractor's form(s) shall be deemed deleted.

G. City of Falls Church Responsibilities.

The following shall be provided by the City within a reasonable time frame and as discussed with the Awardee during the planning conference.

1. The City shall prepare the City's Comprehensive Annual Financial Report, the financial statements of the City's Pension Plans and of the Northern Virginia Criminal Justice Training Academy.
2. The City shall prepare the Auditor of Public Accounts Transmittal Form for Comparative Cost Report.
3. The City shall prepare the Single Audit report and the Data Collection Form.
4. The City shall provide the Awardee with all items requested and provide access to all appropriate files and records as needed.
5. The City shall provide working space and one computer with City network and internet access. The Awardee may not access the City network with its own computers.

H. Price Adjustments

The Contract unit prices will remain firm for the first twelve months of the Contract Term. The unit prices for ensuing Contract years, if the City elects not to terminate the Contract, shall be negotiated by the City and the Contractor. Any percentage increases in negotiated prices for ensuing years shall not exceed 5% or the percentage of movement of the U.S. Department of Labor, Consumer Price Index, All Items, Unadjusted, Urban Areas (CPI-U) for the twelve month period ending in January of each contract year, whichever is lower. If the Contractor and the City do not agree on a negotiated price using the procedure set forth above by the Contract anniversary date and the City elects not to terminate the Contract, the Contract unit prices shall be changed by the Purchasing Manager by an amount equal to the percentage of movement of the CPI-U or 5%, whichever is lower, as set forth above. The Contract unit prices changed as a result of the above shall become effective on the anniversary date of the Contract and shall be binding on the Contractor for the ensuing Contract year.

IV. PRE-PROPOSAL CONFERENCE

A non-mandatory Pre-Proposal Conference is scheduled for February 2, 2010 at 10:00 a.m. in the Falls Church City Hall, Training Room, Level G, 300 Park Avenue, Falls Church, VA 22046.

V. CONTRACT PERIOD AND ALTERATIONS

A. Contract Term

1. The initial Contract term shall be from on or about May 1, 2010 through December 31, 2012 (Base Contract).
2. The City reserves the right to renew the Contract for two successive one-year Engagement Periods under the same terms and conditions as the Base Contract, upon mutual agreement of the parties.

3. The City shall provide to the Contractor notice of intent to renew the contract no later than December 31st of each renewal year. Failure to give such notice will not constitute a breach of this contract. This notice will not be deemed to commit the City of Falls Church to a contract renewal. The Awardee shall respond no later than ten (10) business days of renewal notice or January 15th of the next renewal year whichever is sooner.
- B. No contract alterations or variables in the items of the Contract, except for changes in the date of deliverables as noted in Section III.C.12, shall be valid or binding upon the City unless made in writing and signed by the City and the Contractor.
- C. Non-Appropriation of Funds - All funds for payments by the City for goods/services under contract are subject to the availability of general or specific annual appropriation for this purpose by the City of Falls Church City Council in accordance with the City Code. In the event of non-appropriation of funds by the City Council for the goods or services provided under contract or substitutes for such goods or services which are as advanced or more advanced in their technology, the City will terminate the contract, without termination charge to the City, on June 30th of the then current fiscal year or when the appropriation made for the then current year for the services covered by the contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under the contract beyond the date of termination. Contractor will be reimbursed for the reasonable value of any actual, documented, nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. No amount shall be allowed for anticipated profit on unperformed services.

VI. CONTRACT DOCUMENTS

- A. This solicitation including all attachments, exhibits and/or appendices hereto shall become a part of any contract that may be awarded inclusive of any the terms, conditions and/or provisions that may be changed, added to, deleted, or modified as may be agreed to between the City and the Offeror during negotiations.
- B. Other documents which shall be become a part of any resultant contract include but are not limited to:
 - a. RFP Addenda/Amendments
 - b. Offeror's Proposal
 - c. Proposal clarifications; Responses to questions/issues.
 - d. Documents submitted in conjunction with oral discussions/presentations.
 - e. Memoranda of Negotiations

VII. PROPOSAL PREPARATION

A. GENERAL

1. Proposals must be signed by an authorized representative of the offeror. All information requested must be submitted. Proposals which are substantially incomplete or lack key information may be rejected by the City at its discretion. Each copy of the proposal should be bound in a single volume. Proposal contents shall be arranged in the same order and identified with headings as presented herein. The City encourages the use of recycled products, therefore, it is urged that proposals be submitted on paper made from or with recycled content and be printed on both sides
2. No Contact Policy: No Offeror shall initiate or otherwise have contact with any City representative or employee, other than the Purchasing Manager related to this RFP, after the date and time established for receipt of proposals and before award or cancellation of this RFP. Any contact initiated by an Offeror with any City representative, other than the

Purchasing Manager, concerning this solicitation is prohibited and may cause the disqualification of the Offeror from this procurement process.

3. The City will not consider information other than the materials provided in a duly submitted proposal and/or subsequent interviews for proposal evaluation purposes.
4. If an Offeror has any objections to any of the terms or conditions set forth in this RFP or any changes or additions thereto that the Offeror wants to discuss during negotiations, the Offeror should set forth such objections, changes, or additions in such Offeror's proposal submitted in response to this RFP in the "Exceptions" section of their proposal. Otherwise, submission of a proposal by an Offeror will obligate such Offeror, if it is the successful Offeror, to enter into a contract containing the same or substantially similar terms and conditions as contained herein. Other terms and conditions, if necessary, will be negotiated with the successful Offeror
5. Ownership of Material: Ownership of all data, materials, and documentation originated and prepared for the City pursuant to the RFP shall belong exclusively to the City and be subject to public inspection in accordance with the Virginia Freedom of Information Act.
6. Trade Secrets or proprietary information
 - a. Trade secrets or proprietary information submitted by an offeror in response to this Request for Proposal shall not be subject to public disclosure under the Virginia Freedom of Information Act; **however, the offeror must invoke the protection of such section(s) upon submission of data or materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary (Section 2.2-4342F of the Code of Virginia).**
 - b. Any proprietary or trade secret material submitted must be clearly identified by some distinct method such as highlighting/underlining or submitted in a separate and clearly labeled section. In addition, the offeror must (i) indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information and (ii) clearly state the justifiable reason why protection is necessary. Classification of an entire proposal document and/or prices (line item or totals) as proprietary or trade secret is NOT ACCEPTABLE and may result in REJECTION of the proposal.
 - c. References may be made within the body of the proposal to proprietary information; however all information contained within the body of the proposal not clearly identified or contained in a separate section labeled proprietary shall be public information.
 - d. The Title Sheet or Company/Executive Overview must indicate that the proposal contains proprietary or trade secret material or information and the location thereof.

Once an award has been made, all proposals will be open to public inspection subject to the provisions set forth above.

7. Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to the Evaluation Committee. This will provide an opportunity for the offeror to clarify or elaborate on the proposal, but will in no way change the original proposal. The City's Purchasing Manager will schedule the date, time and location of these presentations. Oral presentations are an option and may not be conducted. Therefore, proposals should be comprehensive and complete.

B. SPECIFIC REQUIREMENTS

1. The proposal should address the items included in the Scope of Services and in the Criteria for Proposal Evaluation.
2. All pages of the Proposal should be printed on 8 ½" x 11" paper with type no smaller than 12 font size.
3. The City reserves the right to accept or reject all or any part of proposals, waive minor technicalities/informalities and award the contract to the most qualified and best suited offeror to best serve the interest of the City

4. Proposals should provide straightforward and concise responses to requests for information and descriptions of qualifications and capabilities.
 - a. Each copy of the proposal should be bound with all documentation in a single volume. Failure to do so may result in a lowered evaluation.
 - b. The City encourages the use of recycled products, therefore, it is urged that proposals be submitted on paper made from or with recycled content and be printed on both sides.
5. Offerors are required to submit the following as a complete proposal and should organize their proposal in the following format:
 1. **Table of Contents** - All pages are to be numbered and indicate the offeror's name.
 2. **RFP Cover Page and Any Addenda**- signed and completed as required.

The Offer's signature on the RFP cover page certifies that:

- (a) the proposal, as submitted, complies with all provisions, requirements terms and conditions and instruction as set forth in this RFP unless otherwise detailed in the "Exceptions" section of the proposal
 - (b) in the preparation and submission of this proposal, said offeror did not, either directly or indirectly, enter into any combination or arrangement with any person, firm or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. Section 1 et seq.) or Sections 59.1-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia.
 - (c) the firm submitting the proposal is registered to do business in the Commonwealth of Virginia.
3. **Credentials of Firm/Project Team Overview** - Include legal name of firm submitting proposal; main office address, when and where incorporated along with name, telephone number and email address of person to contact regarding proposal questions if different from that on RFP Cover page.

State the location of the office from which the work is to be performed, indicate the number of partners, managers, supervisors, seniors and other professional staff employed at that office and provide an organization chart. Identify any sub-consultants, partners, etc whose services will be material to this engagement.

Include a brief history of the firm, including number of years in business and size of firm. Identify a primary point of contact/project manager who will work with the City during the term of any contract.

Include a statement that (a) the firm is independent of the City, as that term is defined in the Ethical Rules of the AICPA, (b) the firm and the partner assigned to the engagement are licensed to perform the audit as provided by applicable laws of the Commonwealth of Virginia and (c) the firm will provide adequate supervision of their field staff on a day-to-day basis.

Offerors shall specify in the introductory cover sheet the any section(s) containing trade secrets or proprietary information.

4. **Project Approach** - A statement of the offeror's understanding of the work to be performed with descriptions of the audit approach and illustrations of the procedures to be employed and a general description of the tasks that the offeror will complete relating to the deliverables. Offeror should include an awareness of difficulties in completion of this undertaking and a plan for surmounting them.
5. **Timelines** - Offerors should provide an estimate of timelines and the assigned personnel associated with those tasks. Include the approximate date the audit(s) will begin (including preliminary fieldwork) and end including, the approximate dates for delivery of the auditors' reports.

6. **Experience and Qualifications** - Information about experience should include direct experience with the specific subject matter and describe specific consulting engagements or other professional experience that is relevant to completing the required deliverables. Offeror should describe their experience in providing professional services of the kind and scope similar to that which this RFP contains including timelines or charts if available.

List the personnel who will be utilized for the engagement. Indicate their positions, classification titles and describe their educational and professional backgrounds, with particular emphasis on their qualifications to audit a local government. Provide a statement that they have met the requirements required by Government Auditing Standards, issued by the Comptroller General of the United States.

Describe what methods the offeror employs to ensure that their personnel obtain adequate training in government accounting principles and are familiar with new changes in these principles.

This section should also indicate the extent of the offeror's and assigned individual's experience in making presentations to elected officials and public bodies as may be required.

7. **Peer Review Letter** - A copy of the report on the firm's most recent peer review and certification that Firm has met the peer review standards of the AICPA and Government Auditing Standards Include the firm's most recent Peer Review Letter.
8. **References**. Offeror must provide at least three (3) references and/or reference letters from a minimum of three organizations, preferably local government, for which proposed staff has completed audits. Include names, addresses and telephone number of persons who may be contacted, a brief description of the work that was performed and the time period of the project or contract. These references shall exclude City references. Reference letters
9. **Financial & Business Summary** - A current Dunn and Bradstreet "Business Information Report" or other equivalent independent study which includes an in-depth analysis of the offeror's financial position, business overview, products and services, history, executives, etc.
10. **Exceptions**: The offeror shall identify (by Section Number) any specific sections or issues and elaborate on any exceptions and proposed resolution(s) to any and all technical, functional, cost, or other issues and/or terms and conditions (including Special & General Terms & Conditions) herein in a subsection labeled "Exceptions".

VIII. PROPOSAL SUBMISSION REQUIREMENTS

- A. In order to be considered for selection, offerors must submit a complete response to this RFP. One (1) original and four (4) copies of each proposal must be submitted to the City's Purchasing Office as detailed below. In addition, one (1) virus free soft copy (PDF format) of the proposal should be included in the package. No other distribution of proposals shall be made by the offeror.
- B. Proposals shall be placed in a sealed, opaque envelope, and clearly marked in the lower left-hand corner with the RFP number (RFP# 0111-10-IAS) and RFP title (Independent Audit Services), and the date/time proposals are scheduled to be received. Proposals are to be submitted by mail, courier or delivered in person ONLY to:
- Attn: Purchasing Manager
City Of Falls Church
300 Park Avenue, Rm 300 E, 3rd Floor, East Wing
Falls Church, Virginia 22046
(703) 248-5007
- C. The City Purchasing Office is open for the receipt of proposal from 8:30 AM until 4:30 PM, Monday through Friday (excluding City holidays). The City is not responsible for deliveries attempted outside of these time periods or misdirected to other offices.
- D. Any proposal received after 11:00 a.m. on February 16, 2010 whether by mail or otherwise, will be returned unopened. The time of receipt shall be determined by the time the proposal is

signed in at the Purchasing Office. Offerors are solely responsible for ensuring that their proposal is stamped by Purchasing Office personnel by the deadline indicated.

- E. If the City declares administrative or liberal leave, scheduled receipt of proposals will be extended to the next business day after which administrative or liberal leave has been canceled.
- F. Oral proposals or proposals delivered by electronic means such as facsimile and e-mail are not allowed and proposals so delivered will not be considered.
- G. All questions regarding this solicitation must be in writing and received by no later than five (5) business days prior to the RFP closing date. No inquiries, if received by the Purchasing Manager within five (5) days of the date set for the opening of proposals, will be given any consideration. Any material interpretation of a requirement or specification, as determined by the Purchasing Manager, will be expressed in the form of an addendum which will be sent to all prospective offerors and/or posted on the City's website (www.fallschurchva.gov) no later than two (2) days before the date set for receipt of proposals. If utilized for the initial RFP release, addenda will also be published through eVA (the Commonwealth of Virginia's e-procurement portal for registered suppliers). Oral answers will not be authoritative.
- H. All erasures, interpolations, and other changes in the proposal shall be signed or initialed by the offeror. Carelessness in quoting business terms (i.e. prices), or in preparation of the proposal will not relieve the offeror. When an error is made in extending total prices, the unit price will govern. Offerors are cautioned to recheck their proposals for possible error. Errors discovered after negotiation cannot be corrected, and the offeror will be required to perform if its proposal is accepted.
- I. By submitting a proposal in response to this Request for Proposal, the offeror represents it has read and understands the Scope of Work, Specific and Standard Provisions, General Terms and Conditions/Instructions any other attachments hereto, and has familiarized itself with all federal, state, and local laws, ordinances, and rules and regulations that in any manner may affect the cost, progress, or performance of the work.
- J. The failure or omission of any offeror to receive or examine any form, instrument, addendum, or other documents or to acquaint itself with conditions existing at the site, if applicable, shall in no way relieve any offeror from any obligations with respect to its proposal or to the contract.
- K. The offeror agrees that proposals will remain firm for a period of one hundred and twenty (120) calendar days after the date specified for receipt of the RFP.
- L. The City has the indisputable right to cancel or stop the RFP and/or accept or reject any proposal, or part of any proposal.
- M. Conditional proposals are subject to rejection in whole or in part.
- N. Under no circumstances shall an offeror, whose proposal has not been awarded, be entitled to any claim for compensation under this solicitation.

IX. PROPOSAL EVALUATION

- A. All Proposals shall be evaluated by the City's Selection & Evaluation Committee ("Committee"). Proposals determined not to meet one or more RFP requirements may be excluded from further consideration.
- B. The following factors will be considered by the Committee in the award of a contract:
 - 1. **Credentials of Firm/Project Team** – Qualifications and resources of the firm with sufficient staff of appropriately qualified, skilled, experienced and trained personnel who will be performing the services requested.
 - 2. **Experience** - The prior experience and reputation of the auditor in auditing local municipalities similar to the City including favorable references from other commercial and/or government entities.

3. **Project Methodology/Approach** - Depth of response and a clearly demonstrated understanding of the services to be provided including but not limited to the specific plans or methodology to be used in performing the audit (i.e., the audit approach) and completeness and reasonableness of the offeror's plan for accomplishing the tasks.
 4. **Timelines** – Ability to meet time lines for completing the audits and submitting the financial statements and auditor's reports to the City by the required deadline.
 5. **Proposal Compliance/Presentation** - The extent to which the proposal meets the requirements of the RFP and the extent to which the offeror is likely to be able to achieve the desired results. Proposed exceptions to contract language, Conditions and Instructions to Offerors, and scope of work requirements and other sections of the RFP will also be considered.
 6. **Reasonableness Of Non-Binding Costs** – Although Consulting fees **ARE NOT** to be submitted with the initial proposal response, such proposed non-binding fees may be considered for those short listed firms involved in the discussion phase of the selection process.
- D. Evaluation of Proposals shall be a two step process based on the criteria listed above and other data developed during the selection process.
1. The first step consists of evaluating the responses of all offerors to create a short list of those deemed responsible and most qualified to perform the work.
- The following criteria, all of relatively equivalent importance, will be used in addition to the review of professional competence of each offeror for evaluation of the offerors for the short list:
- Credentials of Firm/Project team
 - Experience
 - Project Methodology/Approach
 - Timelines
 - Proposal Compliance
- Except as otherwise provided, two or more of the offerors deemed the most fully qualified, responsible and suitable based on their Proposals will be included in the short list.
- The first step evaluation results are used solely to identify those firms who will proceed to the second step.
2. The second step is the selection of the finalist(s) from the short listed offerors.
- The second step selection will be based on an evaluation of either the short listed offerors' interviews and oral presentations, or the content and quality of responses to the City's request for additional information, or a combination of these factors. The evaluation results received by the finalists in the step one evaluation will not be used in step two except as a tie breaker.
- E. Short listed Offerors may be required to give an oral presentation of their proposal to the City. This will provide an opportunity for the offeror to clarify or elaborate on the proposal. Oral presentations are an option and may not be conducted. Therefore, proposals should be comprehensive and complete.
- F. The City is using the Competitive Negotiation Method (Professional Services) for source selection, per the Virginia Public Procurement Act, for this procurement.

X. BASIS OF AWARD

- A. The Committee shall, except as otherwise provided herein, engage in individual discussions with two (2) or more of the short listed firms deemed fully qualified, responsible and suitable by the Committee on the basis of initial responses and other information/data as may be developed or gathered during the evaluation process. Repetitive informal interviews shall be permissible. The

offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise qualifications pertinent to the proposed project, as well as alternate concepts.

- B. Short Listed offerors may be required to give an oral presentation of their proposal to the City. This will provide an opportunity for the offeror to clarify or elaborate on the proposal. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise qualifications pertinent to the proposed project, as well as alternate concepts. Oral presentations are an option and may not be conducted.
- C. Proprietary information from competing offerors shall not be disclosed to the public or to the competitors.
- D. At the Selection stage, the public body may request and discuss non-binding estimates of total project costs including but not limited to non-binding man-hours or costs for services.
 - 1. **Consulting fees ARE NOT** to be submitted with the proposal response, but for those firms involved in the second phase of the selection process, the City may request non-binding estimates of consulting fees and hourly rates and use such estimates in the ranking of firms.
 - 2. Consultants should note that when identifying contract fees and hourly rates, the City expects the following will apply and be included in any resultant contract:
 - The City does not allow mark-ups on reimbursable expenses, including fees charge by sub-consultant(s).
 - Job classifications and fixed hourly rates are to be those of based on the contract fees and hourly rates. Listing of fees for extra services desired but “ranges” will not be accepted.
 - Known sub-consultant's fees and hourly rates are to be included.
- E. Proprietary information from competing offerors shall not be disclosed to the public or to the competitors.
- F. At the conclusion of the informal interviews, on the basis of evaluation factors outlined in this Request for Proposals and all information developed in the selection process to this point, the Evaluation Committee, shall select, in the order of preference, two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the City can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Alternately, the City may elect to cancel this solicitation and make no award.
- G. During the negotiations, the offeror shall propose fixed unit prices for various services to be provided under the agreement. Firm fixed fees will be negotiated for the first twelve months of the contract term. If a need arises for services not covered as part of the original agreement, separate fees will be agreed upon by the Parties, in writing, prior to commencement of such services.
- H. Should the Committee determine in writing that only one (1) offeror is fully qualified, or that one (1) offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.
- I. The City is not required to furnish a statement of the reasons why a particular proposal was not deemed the most advantageous.
- J. The award document will be a contract incorporating by reference all the requirements, terms, and conditions of the solicitation and the offeror's proposal as negotiated.
- K. Offerors are advised that, in the event of receipt of an adequate number of proposals, which, in the opinion of the City, require no clarifications and/or supplementary information, such proposals may be evaluated without further discussion. Hence, proposals should be initially submitted with the

most complete and favorable terms from a technical standpoint which offerors are capable of submitting to the City. Should proposals require additional clarification and/or supplementary information, offerors should be prepared to submit such additional clarification and/or supplementary information, in a timely manner, when so requested.

- L. Public announcement of an award or intent to award will be posted on the City's Purchasing and Procurement Web Page (www.fallschurchva.gov; "Purchasing and Procurement" link)

XI. STANDARD PROVISIONS

Precedence of Terms: In the event that there is a conflict between any specific terms and conditions in this section, specific terms of the General Conditions and Instructions to Offers, or specific terms of the Scope of Work, the Scope of Work provisions shall take precedence, followed by the Standard Provisions of this section.

1. Debarment /Excluded Status

By submitting a proposal, the offeror(s) (including any partner, associate, or subcontractor associated with the provision of services under this solicitation) certify that they are not (1) currently debarred from conducting business or submitting proposals on contracts by any local government or agency of the Commonwealth of Virginia, or the Federal Government; (2) an agent of any person or entity that is currently debarred from conducting business or submitting proposals on contracts by any local government or agency of the Commonwealth of Virginia, or the Federal Government; or (3) suspended, proposed for debarment, excluded or disqualified under the nonprocurement common rule, or otherwise declared ineligible from receiving Federal contracts, certain subcontracts, and certain Federal assistance and benefits. For procurements that are to be funded by Federal monies, the City will confirm a vendor's status via the Excluded Parties List of the Federal Government.

2. Choice Of Law

Any contract resulting from this solicitation is made, entered into, and shall be performed in the City of Falls Church, Virginia, unless otherwise specified, and shall be governed by the applicable laws of the Commonwealth of Virginia. Any dispute arising out of the contract, its interpretations, or its performance shall be litigated only in either the General District Court or in the Circuit Court of the County of Arlington, Virginia.

3. Compliance With Laws

The Contractor shall comply at its own expense with all federal, state, and local laws, rules, regulations, and orders that are directly or indirectly related to the Contractor's performance under the contract, including procurement of required permits, certificates, licenses, insurance, approvals, and inspections. The Contractor shall comply with the Code of Virginia and Section 2.2-4300, the Virginia Procurement Act. The Code of Virginia and the Virginia Public Procurement Act are incorporated herein by reference.

4. License Requirement

All firms doing business in the City of Falls Church must be licensed in accordance with the City's Business, Professional and Occupational Licensing (BPOL) Tax Ordinance. Wholesale and retail merchants without a business location in the City are exempt from this requirement. Questions regarding the BPOL license and tax should be referred to the Office of the Commissioner of the Revenue, 300 Park Avenue, Suite #104E, Falls Church, Virginia 22046-3301. Phone: (703) 248-5019; Fax: (703) 248-5212

5. Insurance

- a. The Contractor is responsible for its work and for all materials, tools equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage of or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the contract, or in any way whatsoever with the contracted work.
- b. The Contractor shall, during the continuance of all work under the contract provide the

insurance as detailed below:

- 1) Maintain statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, volunteers, or subcontractors including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.
 - 2) Maintain Commercial General Liability insurance in the amount of \$1,000,000 per occurrence/aggregate, to protect the Contractor, its subcontractors, and the interest of the City, its officers and employees against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work. The General Liability insurance shall also include the Broad Form Property Damage endorsement, in addition to coverages for explosion, collapse and underground hazards, where required. Completed operations liability endorsement shall continue in force for three years following completion of the contract.
 - 3) Maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the contractor. In addition, all mobile equipment used by the contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.
 - 4) Maintain Professional Liability Insurance in the amount of \$1,000,000 per occurrence/aggregate to cover each individual professional staff where appropriate.
 - 5) Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy
- c. The coverage shall be provided by a carrier(s) companies admitted within the Commonwealth of Virginia, with the A.M. Best's Key Rating of at least A:VI.
 - d. No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty five (45) day advance written notice to the City. The Contractor shall furnish a new certificate prior to any change or cancellation dated. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
 - e. During the period of the contract, the City reserves the right to require the contractor to furnish certificates of insurance for the coverage required.
 - f. The Contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein before any work is started.
 - g. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relive the Contractor and all subcontractors of their liabilities provisions of the contract.
 - h. The City, its officers and employees shall be named as an "additional insured" in the Automobile and General Liability policies and it shall be stated on the Insurance Certificate that his coverage "is primary to all other coverage the City may possess."
 - i. If an "ACCORD" Insurance Certificate form is used by the Contractor's insurance agent, the words, "endeavor to" and "..... but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted or crossed out.

6. Warranties

Contractor warrants to the City that services provided hereunder shall be diligently, efficiently and skillfully performed in a manner which meets or exceeds the highest prevailing standards in the industry, and in accordance with applicable specifications.

All warranties shall survive inspection, acceptance and payment.

7. Default

In case of failure to deliver products, to meet specifications, in accordance with the contract terms and conditions, the City, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the City may have.

8. Termination

Subject to the provisions below, the contract may be terminated by the City upon thirty days (30) written notice; but if any work or service hereunder is in progress, but not completed as of the date of termination, then the contract may be extended upon written approval of the City until said work or services are completed and accepted.

a. Termination for Convenience

In the event that the contract is terminated or cancelled upon request and for the convenience of the City, without the required thirty (30) days advance written notice, then the City shall pay the Contractor a reasonable, equitable adjustment in the contract price for completed performance, but no amount shall be allowed for anticipated profit on unperformed services.

b. Termination for Cause

The City may terminate the contract for cause, default, or negligence on the part of the Contractor at any time. Termination by the City for cause, default or negligence on the part of the Contractor shall be excluded from the foregoing provision (a) hereinabove; termination cost, if any, shall not apply. The thirty (30) days advance notice requirement is waived in the event of Termination for Cause. In the event any Termination for Cause is found to be improper or invalid by any court of competent jurisdiction, then such termination shall be deemed to have been a Termination for Convenience.

c. Termination Due to Unavailability of Funds in Succeeding Fiscal Years

Applicable multiyear contracts may be continued each fiscal year only after funding appropriations and program approval have been granted by the Falls Church City Council. If necessary funds are not appropriated or otherwise made available to support continuation of the performance of the contract in a subsequent fiscal year, then the contract shall be canceled on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by this Contract is spent, whichever event occurs first, and the Contractor shall be reimbursed for the reasonable value of any documented nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this agreement. No amount shall be allowed for anticipated profit on unperformed services.

9. Delays

If delay is foreseen, Contractor shall give thirty (30) days prior written notice to the designate City Project Manger. The City has the right to extend delivery date if reasons appear, in the sole discretion of the City, to be valid. Contractor must keep the City advised at all times of status of order. Except as otherwise provided in the contract, default in promised delivery or failure to meet specifications, authorizes the City to purchase supplies, equipment, or services elsewhere and charge full increase in cost and handling to defaulting Contractor.

10. Obligation Of Offeror

By submitting a proposal, the Contractor covenants and agrees that he has satisfied itself, from its own investigation of the conditions to be met, that Contractor fully understands offeror's obligation and will not make any claim for, or have right to cancellation or relief from the contract because of any misunderstanding or lack of information.

11. Correspondence

All communications between the parties relating to material contractual issues shall be through the Purchasing Manager and must be in writing to be deemed binding.

12. Purchase Orders

Contractor shall not start work prior to the receipt of a purchase order unless the transaction is \$1,000 or less. A purchase order may be enclosed with the resulting contract or may be issued shortly thereafter, and will become an integral part of the resulting contract. The purchase order indicates that sufficient funds have been obligated as required by Title 15 or the Code of the Commonwealth of Virginia and assures distribution of the necessary receiving reports.

Any purchase order issued by the City which references this solicitation or resultant contract, shall be deemed to be placed under and incorporate the terms and conditions of this solicitation or resultant contract as well as any supplemental terms and conditions agreed to by the parties in writing. However, the City's failure to specifically incorporate, identify, or reference the contract on any purchase order shall in no manner affect the applicability of these terms and conditions.

13. Data Sources

The City will provide the Contractor with all necessary and available data possessed by the City that relates to the contract. However, the Contractor is responsible for all costs for acquiring other data or processing, analyzing, or evaluating City data.

14. Additions/Deletions:

The City reserves the right to add similar items/services or delete items/services specified in the resultant contract as requirements change during the period of the contract. The City and the Contractor will mutually agree to prices for items/services to be added to the contract and/or reduction in overall costs for items/services deleted. Contract amendments will be issued for all additions or deletions.

15. Changes

The City may, at any time, by written order, require changes in the products to be provided or services to be performed by the Contractor. If such changes cause an increase or decrease in the Contractor's cost of, or time required for performance of any services or provision of products under the contract, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. The City must approve all work that is beyond the scope of this solicitation. Actual projects/tasks will be ordered in writing by the City, unless for an emergency situation, the Contractor may not begin work on projects until such time as a written authorization and approval of the funding for the project is made.

No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the City.

16. Dispute Resolution

Arbitration shall not be applicable but the parties shall negotiate in good faith to resolve any dispute arising under this Agreement. Disputes by Contractor with respect to the contract which are not otherwise disposed of by mutual agreement shall be submitted in writing and forwarded to the City Purchasing Manager. The Contractor's dispute shall detail all pertinent facts of the dispute and the desired outcome.

Such dispute shall be considered and decided in the first instance by the City's Purchasing Manager, whose decision shall be reduced to writing and forwarded to the Contractor within twenty (20) days of receipt of such written dispute. The decision of the Purchasing Manager shall

be final and binding unless within twenty (20) days from the date of such decision, the Contractor forwards a written appeal addressed to the City Manager with copy to the Purchasing Manager. Within twenty (20) days of receipt of such written appeal, the City Manager shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor.

The decision of the City Manager shall be final and binding unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. Pending a final determination of a properly appealed decision of the Purchasing Manager, the Contractor shall proceed diligently with the performance of the Contract in accordance with that decision.

In accordance with §2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

17. Non-Waiver

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the contract, shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

The City's failure at any time to enforce any of the provisions of the contract or any right or remedy available hereunder or at law or equity, or to exercise any option herein provided will in no way be construed to be a waiver of such provisions, rights, remedies or options or in any way to affect the validity of this agreement. The exercise by the City of any rights, remedies or options provided hereunder or at law or equity shall not preclude or prejudice the exercising thereafter of the same or any other rights, remedies, or options.

18. News Release/Publicity By Contractors

As a matter of policy, the City does not endorse the products or services of a Contractor. News releases or other publicity concerning any resultant contract from this solicitation will not be made by a Contractor without the prior written approval of the City. All proposed news releases will be routed to the Purchasing Manager for review and consideration of approval.

19. Relationship Of Parties

In providing any goods or services under any resulting contract, the Contractor is acting solely as an independent contractor and not as an agent of any other party. Persons furnished by the respective parties shall not be considered employees of the other party for any purpose. Nothing contained in the solicitation or any resultant contract is intended to give rise to a partnership or joint venture between the parties.

20. Provisions Required By Law Deemed Inserted

Each and every provision of laws and clauses required by law to be inserted in a contract resulting from this solicitation shall be deemed to be inserted and incorporated by reference. The contract shall be read and enforced as though the required provisions are included and if through mistake or otherwise, any such provision is not inserted or not correctly inserted, then upon the application of either party, the contract may be amended to make such Insertion.

XII. GENERAL CONDITIONS AND INSTRUCTIONS TO OFFERORS

- A. The general rules and conditions which follow apply to all purchases and become a definite part of each formal solicitation and resulting contract award issued by the City, unless otherwise specified. Offerors or their authorized representatives are expected to inform themselves fully as to the conditions, requirements,

and specifications before submitting proposals; failure to do so will be at the offeror's own risk and relief cannot be secured on the plea of error.

- B. Subject to all state and local laws and all rules, regulations and limitations imposed by legislation of the federal government, proposals on all solicitations issued by the City will bind offerors to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.
- C. If there is a conflict between the terms and conditions in this "General Conditions and Instructions to Offeror" and the Standard Provisions and/or conditions in other attachments to this solicitation, the latter shall take precedence.

1. **DEFINITIONS:** The terms defined in this section shall have the meanings set forth below whenever they appear regardless of case (capitalized or not), unless the context in which they are used clearly requires a different meaning or a different definition is described for a particular Section or provision:

- a. **OFFEROR:** Any individual, company, firm, corporation, partnership or other organization providing a proposal in response to a solicitation issued by the Purchasing Manager and offering to enter into contract with the City.
- b. **CONTRACTOR:** Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the City.
- c. **CITY:** City of Falls Church.
- d. **DAY:** Unless otherwise specified "day" or "days" shall mean calendar days
- e. **GOODS:** All material, equipment, supplies, printing, and automated data processing/information technology hardware and software.
- f. **INFORMALITY:** A minor defect or variation of a proposal from the exact requirements of the Request for Proposal which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.
- g. **PROFESSIONAL SERVICES:** Any type of professional service performed by an independent contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering (which shall be procured as set forth in the Code of Virginia §2.2-4301 in the definition of competitive negotiation at paragraph 3 (a).
- h. **PROPOSAL:** The offer of a supplier to provide goods and/or services in accordance with general specifications or requirements in a Request for Proposal solicitation (RFP). A Proposal is subject to scope and price negotiation.
- i. **PURCHASING MANAGER:** The Purchasing Manager employed by the City of Falls Church, Virginia.
- j. **REQUEST FOR PROPOSAL (RFP):** A request which is made to prospective suppliers (Offeror) for a Proposal. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.
- k. **RESPONSIBLE OFFEROR:** An individual, company, firm, corporation, partnership or other organization having the capability in all respects to perform fully the contract requirements, and also having the moral and business integrity and reliability which will assure good faith performance, and having been prequalified, if required.
- l. **SERVICES:** Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.
- m. **SOLICITATION:** Depending upon the context – (1) an RFP or IFB or (2) the process of notifying prospective bidders/offerors that the City wishes to receive bids/proposal on a set of requirements to provide goods or services.
- n. **STATE:** Commonwealth of Virginia.

CONDITIONS OF SOLICITATION RESPONSE

2. **ACCEPTANCE OF PROPOSALS - BINDING 90 DAYS** - Unless otherwise specified, all proposals submitted shall be binding for ninety (90) calendar days following solicitation opening date, unless extended by mutual consent of all parties.
3. **PROPOSAL OPENING** – The City is not obligated to open proposals in public. If the City elects to do so, only the names of the Offerors submitting proposals will be read aloud. All proposals received in response to a Request for Proposal (RFP) made available for inspection as provided in paragraph in this section entitled "Virginia Freedom of Information Act".
4. **LATE PROPOSALS:** LATE proposals will be returned to offeror UNOPENED if the RFP number and return address is shown on the envelope.
5. **TAX EXEMPTION:** The City is exempt from the payment of federal excise taxes and the payment of State Sales and Use Tax on all tangible, personal property for its use or consumption. Tax exemption registration number 54-6001271 applies. Certificated furnished upon request. The price proposed must be net, exclusive of taxes
6. **PROHIBITION AGAINST UNIFORM PRICING** - The City shall encourages open and competitive solicitation by all possible means and shall endeavor to obtain the maximum degree of open competition on all purchase transactions using the competitive sealed bidding, competitive negotiation, or open market methods of procurement. In submitting a solicitation response each offeror shall, by virtue of submitting a proposal, guarantee that he or she has not been a party with other offerors to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the proposals of participating offerors. .

AWARD

7. **AWARD OR REJECTION OF OFFERS:**
 - a. Awards resulting from an RFP will be made to the highest qualified offeror whose proposal is determined, in writing, to be the most advantageous to the City taking into consideration the evaluation factors set forth in the RFP.
 - b. In determining the responsibility of an offeror, a number of factors, including but not limited to the following factors will be considered. The offeror should:
 - 1) be a regular dealer, supplier, or contractor, or when required in the solicitation an authorized dealer, of the goods or services offered;
 - 2) have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;
 - 3) have a satisfactory record of performance;
 - 4) have a satisfactory record of integrity; and,
 - 5) have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the purchase order or Contract.
 - c. The City reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all offers and to waive any informality in offers received whenever such rejection or waiver is in the best interest of the City. Award may be made to as many offerors as deemed necessary to fulfill the anticipated requirements of City.
 - d. All awards for goods and services over \$100,000 and professional services over \$60,000 are contingent upon City Council approval.
 - e. The City has the indisputable right to accept or reject any proposal or part of any proposal, cancel and/or stop any solicitation.
8. **NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS** - A written award notice (or Acceptance Agreement, contract, or Purchase order) mailed (or otherwise furnished) to the successful offeror within the time for acceptance specified in the solicitation shall be deemed to result in a binding contract. The following documents which are included in the solicitation shall be incorporated by reference in the resulting contract and become a part of said contract:
 - a. City Solicitation Forms and other documents which may be incorporated by reference, if applicable,
 - b. General Conditions and Instructions to Offerors,
 - c. Specific or Special Provisions and Specifications,

- d. Pricing Schedule,
 - e. Any Addenda/Amendments/Memoranda of Negotiations
9. **PROMPT PAYMENT DISCOUNT** - In connection with any discount offered, time will be computed from the date of delivery of the services or supplies to the carrier when delivery, inspection and acceptance are at the point of origin; or, from date of delivery, inspection and acceptance at destination; or, from date correct invoice or voucher is received in the office specified by the City, if the latter is later than the date of acceptance. In the event the offeror does not indicate a prompt payment discount, it shall be construed to mean NET 30 days.
 10. **INSPECTION-ACCEPTANCE** - Inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the contract requirements. Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time.
 11. **CONTRACT ALTERATIONS** - No alterations in the terms of a contract shall be valid or binding upon the City unless made in writing and signed by the City's authorized representative.
 12. **ASSIGNMENT OF CONTRACT** - Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties (in whole or in part) to any other person, firm or corporation, without the previous written consent of the City. If the Contractor desires to assign their right to payment of the contract, Contractor shall notify the Purchasing Manager immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from his or her obligations or change the terms of the contract.
 13. **FUNDING-A** contract shall be deemed binding only to the extent of appropriations available for the purchase of goods and services.

CONTRACT PROVISIONS

14. **ANTI-TRUST:** By entering into a contract, the offeror conveys, sells, assigns, and transfers to the City all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the City under said contract.
15. **INDEMNIFICATION** - Contractor shall indemnify, keep and hold harmless the City, its agents, officials, and employees against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the City in consequence of the granting of a contract or which may otherwise result therefrom including the use of any materials, goods or equipment of any kind or nature furnished by the contractor or any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the City or to failure of the City to use the materials, goods or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and hold harmless and defend the City as herein provided.
16. **CONTRACT DOCUMENTS:** The contract entered into by the parties shall consist of the Request For Proposal, the signed proposal submitted by the Contractor, the Standard Provisions, Specifications, Specific Terms and Conditions, and the General Terms and Conditions Instructions to Offers, all of which shall be referred to collectively as the Contract Documents.

If the contractor has a standard contract form, this form shall be submitted with the proposal submittal for the City's review and consideration of its terms and conditions.
17. **ANTI-DISCRIMINATION:** By submitting their proposals all offerors certify to the City that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, where applicable, and Section 2.2-4311 of the Virginia Public Procurement Act which provides:
In every contract over \$10,000.00 the provisions in "a" and "b" below apply:
 - a. During the performance of this contract, the contractor agrees as follows:
 - 1) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - b. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.
18. **ETHICS IN PUBLIC CONTRACTING:** The provisions contained in Sections 2.2-4367 through 2.2-4377 of the Virginia Public Procurement Act as set forth in the Code of Virginia (1950), as amended, shall be applicable to all contracts solicited or entered into by the City.
- By submitting their proposals, all offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.
19. **CRIMINAL SANCTIONS:** The provisions referenced in Item 19 supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§§ 18.2-498.1 et seq.), and Articles 2 (§§ 18.2-438 et seq.) and 3 (§§ 18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.
20. **FORCE MAJEURE:** Neither party shall be liable for any delay or failure to perform its obligations in connection with any action described in this Agreement, if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, acts by the public enemy, or other cause beyond such party's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).
21. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the City, the Contractor certifies that the Contractor does not, and shall not, during the performance of the Contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
22. **USE OF INFORMATION:** Any specifications, drawings, sketches, models, samples, tools, computer or other apparatus programs, technical or business information or data, written, oral, or otherwise (all hereinafter designated "Information") which the City furnished, or shall furnish, to the Contractor under the contract or in contemplation of this agreement, or that Contractor comes in contact with on City premises or under City control shall remain City property. All copies of such information in written, graphic or other tangible form, and all information, ideas, discoveries, improvements, derived from or reflecting such information, shall be returned to City at its request, and in any event within thirty (30) days after the expiration or termination of the contract. Unless such information was previously known to Contractor free of any obligation to keep it confidential, or has been or is subsequently made public by City or a third party without breach of any agreement, it shall be kept strictly confidential and shall be used only in performing services under this Agreement, and may not be used for other purposes except upon such terms as may be agreed upon between Contractor and City in writing. Unless approved in writing by the Purchasing Manager, the Contractor may not sell or give to any individual or organization any information, reports, or other materials given to, prepared, or assembled by the Contractor under the final contract.
23. **RECORD RETENTION/AUDITS:** The Contractor shall maintain accurate records of all invoices, amounts billable to and payments made by the City, during the performance of the contract and for a period of three (3) years from the completion of this agreement. Such records shall include, but not be limited to: all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices, including the Contractor's copies of periodic estimates for partial payment; ledgers, cancelled checks; deposit slips; bank statements; journals; contract amendments, and change orders; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Such records shall be available to the City on demand and without advance notice during the Contractor's normal working hours. City personnel or designee may perform in-progress and post-audits of the Contractor's records.
24. **BANKRUPTCY:** If the Contractor should be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the Contractor's insolvency, or if the Contractor should persistently or repeatedly refuse or should fail, except in cases for which extension

of time is provided, to deliver the goods or services within the time specified, or if the Contractor otherwise defaults, then the City may without prejudice to any other right or remedy, and after giving the Contractor seven (7) days written notice, terminate the contract Contractor and procure such goods or services from other sources. In such event, the Contractor shall be liable to the City for any additional cost occasioned by such failure or other default. In such cases, the Contractor shall not be entitled to receive any further payment if the expense of finishing the contract requirements, including compensation for additional managerial and administrative services shall exceed the unpaid balance of the contract price, the Contractor shall pay the difference to the City.

25. **SUBCONTRACTING:** If one or more subcontractors are required, the contractor is encouraged to utilize small, minority-owned and women-owned business enterprises. For assistance in finding subcontractors, contact the Virginia Department of Business Assistance <http://www.dba.state.va.us/>; the Virginia Department of Minority Business Enterprise <http://www.dmb.e.state.va.us>; local chambers of commerce and other business organizations. As part of the contract award, if requested by the City, the prime contractor agrees to provide the names and addresses of each subcontractor that subcontractor's status as defined by the Commonwealth of Virginia as small, minority-owned and/or woman-owned business and the type and dollar value of the subcontracted goods/services provided.

The Contractor may subcontract third party issues performed under the contract, but must submit a written list of those subcontractors, their addresses, personnel who will be performing the work, and a description of the work to be performed to the City prior to the work actually being done. The City must agree to the third party's work and reserves the right to deny the third party access if necessary.

26. **PAYMENTS TO SUBCONTRACTORS:** Within seven (7) days after receipt of amounts paid by the City for work performed by a subcontractor under this Agreement, the Contractor shall either:
- Pay the subcontractor for the proportionate share of the total payment received from the City attributable to the work performed by the subcontractor under this agreement; or,
 - Notify the City and subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason for non-payment.

The Contractor shall pay interest to the subcontractor on all amounts owed that remain unpaid beyond the seven-day period except for amounts withheld as allowed in item b. above.

Unless otherwise provided under the terms of this agreement, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include this provision in each of its subcontracts requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this provision may not be construed to be an obligation of the City.

27. **TIME OF THE ESSENCE:** - Time is of the essence in respect to all provisions of the contract that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this agreement.
28. **KEY PERSONNEL** - Any personnel named in the offer details will remain responsible for performance of the described task(s) throughout the period of any contract resulting from the solicitation. No diversion or replacement may be made without advance written notice to the Purchasing Manager and submission of a resume of the proposed replacement for review and approval by the City.
29. **REPORTS** - The Contractor must submit status reports as requested appropriate to the tasks and projects that are developed under contract in a form, format and frequency satisfactory to the City.
30. **OWNERSHIP OF MATERIAL** - Ownership of all data, materials and documentation originated and prepared for the City pursuant to the solicitation shall belong exclusively to the City and be subject to public inspection in accordance with the Virginia Freedom of Information Act.

OFFEROR REMEDIES

31. **PROTEST OF AWARD OR DECISION TO AWARD:**
Any offeror may protest the award or decision to award a contract by submitting a protest in writing to the Purchasing Manager, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first in pursuant to this RFP only in accordance with the provisions of Sections 2.2-4357, 4358, 4359, 4360, 4363, and 4364 of the Code of Virginia, and only if such is provided for in such Code section.

GENERAL

32. **LEGAL ACTION:** No offeror, potential offeror, or subcontractor shall institute any legal action until all statutory requirements have been met.
33. **RIGHTS OF THE CITY:** The City reserves the right to accept or reject all or any part of proposals, waive minor technicalities/informalities and award the contract to the most qualified and best suited offeror to best serve the interest of the City.
34. **QUALIFICATIONS OF OFFERORS:** The City may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods, and the offeror shall furnish to the City all such information and data for this purpose as may be requested. The City reserves the right to inspect the offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The City further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the City that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
35. **GUARANTEES & WARRANTIES:** All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Manager before final payment on the contract is made. Unless otherwise stated, manufacturer's standard warranty applies.
36. **GENERAL GUARANTY:** The Contractor agrees to:
- Save the City, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or un-copyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a Contract for which the Contractor is not the patentee, assignee, licensee or City.
 - Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules, and regulations of the City.
 - Protect the City from loss or damage to City owned property while it is in the custody of the Contractor.
37. **SERVICE CONTRACT GUARANTY:** The Contractor agrees to:
- Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the City may reduce the said services at any time.
 - Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
 - Render all work and services in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods, and procedures of all government boards, bureaus, offices, and other agents.
 - Allow services to be inspected or reviewed by an employee of the City at any reasonable time and place selected by the City. The City shall be under no obligation to compensate the offeror for any services not rendered in strict conformity with the contract.
 - Stipulate that the presence of a City inspector shall not lessen the obligation of the offeror for performance in accordance with the contract requirements, or be deemed a defense on the part of the offeror for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Manager.
38. **OFFICIALS NOT TO BENEFIT-**
- Each offeror shall certify, upon signing a proposal, that to the best of his or her knowledge no City of Falls Church official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.
 - Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a proposal or contract, and that the contractor has

failed to disclose such benefit or has inadequately disclosed it, the City Manager, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.

- c. In the event the offeror has knowledge of benefits as outlined above, this information should be submitted with the proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract, the offeror shall address the disclosure of such facts to the City of Falls Church, 300 Park Avenue, Falls Church, VA 22046. Relevant Invitation/Request for Proposal Number should be referenced in the disclosure.
39. **REGISTERING OF CORPORATIONS**-Any foreign corporation transacting business in Virginia shall secure a certificate of authority as required by Section 13.1-757 of the Code of Virginia, from the State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23209. The Commission may be reached at (804) 371-9733. The consequences of failing to secure a certificate of authority are set forth in Virginia Code Section 13.1-758.
 40. **COVENANT AGAINST CONTINGENT FEES** -The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the City shall have the right to terminate or suspend this contract without liability to the City or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
 41. **VIRGINIA FREEDOM OF INFORMATION ACT:** All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act except as provided below:
 - a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
 - b. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the City decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
 - c. Trade secrets or proprietary information submitted by a offeror or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the offeror or subcontractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

Nothing contained in this section shall be construed to require the City, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the City.
 42. **INELIGIBILITY:**
 - a. Any person or firm suspended or debarred from participation in City procurement shall be notified in writing by the Purchasing Manager in accordance with the City Purchasing Policy incorporated herein by reference.
 43. **SMALL, WOMAN AND MINORITY-OWNED BUSINESS (SWaM):**
 - a. The City encourages Small, Woman and Minority-owned business to participate in business opportunities with the City.
 - b. Where Federal grants or monies are involved it is the policy of City, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A-102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.
 - c. Contact the Virginia Department of Minority Business Enterprise for more information regarding certification and certified businesses: <http://www.dmbe.virginia.gov/>

44. **DRUG FREE WORKPLACE**-During the performance of a contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.
45. **AMERICANS WITH DISABILITY ACT** - The City is fully committed to letter and spirit of the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all City programs, activities and services. The City's government contractors, subcontractors, offerors, and/or suppliers are subject to this ADA policy. All individuals having any City contractual agreement must make the same commitment. The Contractor's acceptance of any contract with the City acknowledges your commitment and compliance with ADA.